

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

PHILIP C. BAY,

Petitioner,

v.

Civil Action No. 2:15cv64

HAROLD W. CLARKE, Director,
Virginia Department of Corrections,

Respondent.

FINAL ORDER

Before the Court is a Petition for a Writ of Habeas Corpus, ECF No. 1, filed pursuant to 28 U.S.C. § 2254, and the Respondent's Motion to Dismiss, ECF No. 14. On November 22, 2010, Bay was convicted after a jury trial in the Circuit Court for the City of Virginia Beach (the "trial court") of two counts of conspiring to commit an act of terrorism (Va. Code § 18.2-46.5(B)); two counts of soliciting, inviting, recruiting, encouraging, or otherwise causing or attempting to cause another to participate in an act or acts of terrorism (Va. Code § 18.2-46.5(C)); eleven counts of manufacturing or possession of an explosive device (Va. Code § 18.2-300(B)); and one count of possession, manufacturing, or distribution of a weapon of terrorism with intent to commit an act of terrorism (Va. Code § 18.2-46.6). On February 23, 2011, Bay was sentenced to sixty-

eight years with fifty-six years suspended. In his petition, Bay challenges the constitutionality of this conviction and sentence.

The matter was referred for disposition to a United States Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(B)-(C), Federal Rule of Civil Procedure 72(b), Local Civil Rule 72, and the April 2, 2002 Standing Order on Assignment of Certain Matters to United States Magistrate Judges. In a Report and Recommendation entered on December 4, 2015, ECF No. 24, the Magistrate Judge recommended the Respondent's Motion to Dismiss be granted, and the Petition be denied and dismissed with prejudice. The parties were advised of their right to file written objections to the Report and Recommendation. On December 17, 2015, Bay filed a Motion for Evidentiary Hearing, ECF No. 26, and on December 18, 2015, Bay filed a Motion for Extension of Time to object to the Report and Recommendation, ECF No. 25. The Court denied the Motion for Evidentiary Hearing and granted the Motion for Extension of Time to January 18, 2016. ECF No. 27. On December 28, 2015, Bay filed a Motion to Amend his Motion for Evidentiary Hearing. ECF No. 29. On January 22, 2016, Bay filed objections to the Report and Recommendation. ECF No. 30.


Having reviewed the record and examined the objections

filed by Petitioner to the Report and Recommendation, and having made de novo findings with respect to the portions objected to, the Court agrees with the Report and Recommendation on the grounds stated by the Magistrate Judge and **ADOPTS** and **APPROVES** the Report and Recommendation, ECF No. 24, in its entirety as the Court's own opinion. Accordingly, the Respondent's motion to dismiss, ECF No. 14, is **GRANTED**, and the Petition, ECF No. 1, is **DENIED** and **DISMISSED WITH PREJUDICE**. It is **ORDERED** that judgment be entered in favor of the Respondent. Petitioner's Motion to Amend his Motion for Evidentiary Hearing, ECF No. 29, is **DENIED as MOOT**.

The Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of the Court at the Walter E. Hoffman United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date judgment is entered. Because the Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c) and Federal Rule of Appellate Procedure 22(b)(1), the Court declines to issue a certificate of appealability. *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003).

The Clerk is DIRECTED to forward a copy of this Order to the Petitioner and counsel of record for the Respondent.

It is so ORDERED.



Mark S. Davis
United States District Judge

Mark S. Davis
United States District Judge

Norfolk, Virginia

Date: March 3, 2016